IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

LONG CAUSE SUIT NO.775 OF 1976

M/s.T.T.Blades and Anr. ..Plaintiffs

Vs.

The United India Fire & General Insurance Co.Ltd. ..Defendants

Mr.Simil Purohit i/b Little and Co. for the plaintiffs

Mr.Sanjiv Singh i/b Narichania and Narichania for the defendants

CORAM : S.U.KAMDAR, J
DATED : 10TH APRIL, 2006

ORAL JUDGMENT:

1. The present suit is filed for the recovery of sum of Rs.4,44,155/- with further interest @ 9% p.a. on the principal amount of Rs.3,50,000/- from the date of the suit till the date of decree and @ 6% p.a. from the date of the decree till payment and/or realisation. Some of the material facts of the present case are briefly enumerated as under:

2. The plaintiff no.1 are a partnership firm

and are interalia carrying on business of manufacturing and selling safety razor blades, having their factory and place of business at T.T.Blade Building, 9A Saki Naka, Andheri, Bombay-72. The plaintiff no.2 are a Banking Company incorporated under the Indian Companies Act and having their registered office at Mangalore and branch office interalia at Mahim. The defendants are an Insurance Company carrying on business of General Insurance prior to its nationalisation. On nationalisation of the General Insurance business under the provisions of the General Insurance (Acquisition and Transfer of Undertakings) Act, 1972, the defendant company has been merged with the General Insurance Corporation w.e.f.1.1.73. The said General Insurance Corporation was taken over by the defendant company namely The United Fire and General Insurance Co. Ltd. Thus, the defendants are the successors in title of a company known as Madras Motor and General Insurance Company Limited as

3. The plaintiff no.1 for the purpose of its business made an application to the plaintiff no.2

for giving various credit facilities. Amongst the other credit facilities, the plaintiff no.1 also sought a demand cash credit facility on the basis of hypothecation of various movable properties. On 7.6.71, an agreement was executed by and between the plaintiff no.1 and plaintiff no.2 hypothecating various goods belonging to the plaintiff no.1 with plaintiff no.2. It is the case of the plaintiffs that the hypothecation of goods was blades in process as well as finished blades lying at the factory premises of the plaintiff no.1. It is the case of the plaintiff no.1 that the said hypothecation agreement was renewed on 10.7.72. However, the description of the goods remained the same. In view of the fact that the goods were hypothecated by the plaintiff no.1 with plaintiff no.2, plaintiff no.1 obtained an Insurance Policy from the defendants on account of plaintiff no.2 who as a creditor to whom goods were hypothecated had an insurable interest in the said hypothecated goods. The defendants were requested by the plaintiff no.2 to issue an insurance policy in respect of goods and stocks hypothecated by the plaintiff no.1 with plaintiff no.2. It is the case

of plaintiffs that the said policy was valid for the period 9.6.72 to 9.6.73. The total claim under the policy was for Rs.3,50,000/-. Thus, the defendants undertook to indemnify the plaintiffs against any loss which may be caused to the plaintiffs in respect of the insured goods. The said insurance policy was a fair insurance policy. It is the case of the plaintiffs that accordingly as per the request of the plaintiff no.2, the defendants issued a fair insurance policy dt.14.6.72 being policy no.F.195740. The said policy described the said goods as under:

> "On stock of raw materials, such as steel strips, tools, spared, die punches and such other materials pertaining to the Insured's trade belonging to them and under hypothecation to the Bank whilst stored and/or lying in the ground floor of the premises of I Class construction situate at Survey No.14, Hissa No.5, Plot no.9A, Village Mohilla, Sakinaka, Vihar Road, Sakinaka, Bombay-72."

4. It is the case of the plaintiffs that under the policy all the goods of the plaintiff no.1 which were lying in the said premises have been insured. The plaintiffs were manufacturers of

safety razor blades.

5. Sometime in or about 24.5.73 in the morning at about 4 a.m. a fire took place in plaintiff no.1's factory due to the cable fault. The fire gutted the ground floor of the factory premises and consequently, the blades which were kept for drying after being dipped in the chemicals caught fire. The fire was noticed by the plaintiff no.1's watchman who called for the help and ultimately fire was brought under control with the help of employees of plaintiff no.1. It is the case of the plaintiffs that the blades which were lying in the factory were badly damaged due to the fire and consequently, the plaintiff no.1 suffered a loss of blades worth Rs.3,86,654.36. Immediately, thereafter the defendant company was contacted and were informed about the said fire. It is the case of the plaintiffs that at about 11.15 a.m. on the very same day, one Mr.Patel accompanied by one Mr.Narsimham from the defendant company visited the premises. It is further the case of the plaintiffs that the Surveyors M/s.Mehta & Padamsey P.Ltd also visited the plaintiffs factory premises at 5.p.m.

on the very same day and carried out survey. The plaintiffs have stated in the plaint that because of the request of the technician of Electric Supply Company i.e. Bombay Suburban Electric Supply, the plaintiffs were required to remove the damaged blades from the place where they were lying so that the electricity repair work can be carried out by the said technician. Accordingly, the plaintiffs removed the said blades which were lying near the cable area. Thereafter the electricity supply company started the repairs of the said damaged cables. On 24.5.73 the plaintiff no.1 informed the Inspector of Police, Kurla Police Station, Bombay 72 about the said fire. On 24.5.73 the plaintiff no.1 also informed the Asst.Collector of Central Excise Division No.10, Bombay regarding the said fire in the factory and informed him that the factory would remain closed till new cable was installed. The plaintiff no.1 by letter dt.26.5.73 informed the Asst.Collector of Central Excise Division No.10 about the damages quantity of goods i.e. blades which were lying nearby the place of fire. It is the case of the plaintiffs that the Superintendent of Central Excise visited the

plaintiff no.1's factory premises on 26.5.73 and verified the damaged blades and made a panchnama on 30.5.73 and recorded the statements of plaintiff no.1's employees. On 1.6.73, the Superintendent of Central Excise informed the plaintiff no.1 that the quantity of blades damaged and/or rendered unserviceable in the fire accident should not be removed from the factory premises without the permission of his office. On 27.5.73, the plaintiff no.1 addressed a letter to M/s.Mehta and Padamsey P.Ltd and forwarded all necessary documents to them. By letter dt.30.5.73, the said surveyors asked for certain explanation from the plaintiff no.1 and also called for various documents for verification. On 6.6.73 the plaintiff no.1 furnished all the necessary particulars required by the surveyors. On 23.6.73, the plaintiffs wrote a letter to the surveyors and requested the surveyors that they should get the claim of the plaintiff processed and pass for the insurance also in respect of the said fire. It is the case of the plaintiffs that after the surveyor carried out survey and survey report was prepared, there was a considerable correspondence between the

surveyor and the plaintiffs about the nature of goods which has been caught fire. It has also been the case of the surveyor in correspondence that the plaintiffs had mixed up the goods so as to make them unable to identify which are the goods which are the subject matter of insurance policy and which are not.

6. However, it is the case of the plaintiffs that since the defendants were not processing the claim and paying the said amount, the plaintiffs by attorney letter dt.11.5.76 called upon the defendants to make payment by deciding the claim of Insurance Policy in respect of damaged goods which were covered by the said policy. Inspite of the correspondence, when no payment was forthcoming, the plaintiffs filed the present suit for the recovery of the aforesaid amount under the insurance policy.

7. The defendants have tendered the written statement and in the written statement various defences are raised which are technical as well as on merits. It has been contended that condition

no.19 of Fire Insurance Policy interalia requires that the claim should be lodged within the period of expiry of 12 months from the date of happening of loss. No such claim has been lodged within 12 months and therefore, the claim is barred and cannot be processed. It has been contended that under condition no. 13, the suit must be filed within 3 months of the rejection of the claim and since suit is not filed within prescribed period of 3 months suit is not maintainable. Similar contention raised is in respect of condition no.12 and it has been alleged that there has been no compliance of condition no.12 and therefore suit is liable to be dismissed. It has been contended in the written statement that the plaintiffs have failed to comply with the instruction of surveyor, M/s.Mehta and Padamsey P.Ltd. that not to remove the gods which are damaged in fire and inspite of the same, goods are removed making it impossible for the surveyor to identify whether the alleged gods destroyed in the fire were infact covered by the insurance policy or not. It has been submitted that in view of non compliance and hindrances by the plaintiff no.1, the surveyor is not able to

discharge his duty and therefore the plaintiffs are not liable to make payment of any of the insurance amount. Without prejudice to the aforesaid submission, it has been submitted in the written statement that the goods damaged were not covered by the said policy. It has been submitted that what was covered by the said policy. It is submitted that only raw material and the process product was the subject matter of hypothecation with plaintiff no.2. It has been contended that the goods in process or finished product of blades were not hypothecated goods and therefore not covered by the insurance policy. In so far as the claim for damages is concerned, the defendants have also denied the quantum of amount claimed and has put the plaintiffs to strict proof thereof. In the aforesaid circumstances, the defendants have submitted in his written statement that the suit is liable to be dismissed.

8. On the basis of aforesaid pleadings, this court has framed the following issues:

1. Whether the 1st plaintiffs are a registered firm under the Indian Partnership Act?

2. Whether the plaint discloses no cause of action in view of condition no.19 of the insurance policy, as contended in paragraph 1 of the written statement?

3. Whether the plaint discloses no cause of action in view of condition no.13 of the insurance policy, as contended in paragraphs 2 and 13 of the written statement?

4. Whether the suit is misconceived in view of the fact that the risk of goods which were allegedly damaged in the fire was not covered under the insurance policy, as contended in paragraphs 3 and 8 of the written statement?

5. Whether the suit is misconceived due to non-compliance by the plaintiffs with condition no.12 of the insurance policy, as contended in paragraphs 4 and 12 of the written statement?

6. Whether the suit is misconceived for want of compliance by the plaintiffs with condition no.11 of the insurance policy, as contended in paragraphs 5 and 12 of the written statement?

7. Whether the plaintiffs prove that the goods hypothecated with plaintiff no.2 included blades in process (including the process of drying), as well as finished blades (whether packed or unpacked), lying at the factory of plaintiff no.2, as contended in paragraph 8 of the written statement?

8. Whether the plaintiffs obtained the insurance policy from the defendants pursuant to the provisions of any agreement of hypothecation between the 1st and 2nd

plaintiffs?

9. Whether the officers of the defendants inspected either the documents or the factory of the 1st plaintiff before issuing the insurance policy, or that the insurance policy was issued after the defendants were satisfied about the alleged documents or the goods/stocks lying at the 1st plaintiffs' factory?

10. Whether the plaintiffs prove that any blades which were allegedly lying near the cable in the room that was involved in the fire, got damaged in the fire?

11. Whether blades worth Rs.3,86,654.36, or worth anything at all, were damaged in the said fire?

12. Whether the plaintiff no.1 deliberately prevented the surveyors M/s. Mehta & Padamsey P.Ltd. from checking and verifying the quantities of different kinds of blades alleged to have been damaged, and from checking and testing them to ascertain the extent of damage, if any, and whether the plaintiffs thereby contravened condition no.12 of the insurance policy, and all the benefits under the insurance policy were forfeited, as contended in paragraph 4 of the written statement?

13. Whether the plaintiffs prove that the defendants waived the stipulations of condition no.19, or of any other condition, of the insurance policy, or that the defendants led the plaintiffs to believe to their detriment that the plaintiffs' claim was maintainable, or that it was not barred by any of the provisions of the said policy, or that it was not obligatory on the part of the plaintiffs to comply with any condition precedent, or that the defendants led the plaintiffs to believe that the defendants would not rely upon any clause or condition of the policy in

rejecting the plaintiffs' claim on such ground or stipulation?

14. Whether the defendants are stopped and/or precluded from relying upon the terms and conditions of the said policy, as contended in paragraph 10 of the plaint?

15. Whether the plaintiffs prove that the loss to electrical installations in the 1st plaintiffs' factory was covered by the said insurance policy, as contended bin paragraph 11 of the plaint?

16. Whether the defendants are liable to pay Rs.4,45,155/- or any other sum, or interest, to the plaintiffs?

17. In the event of this Hon'ble Court deciding issues 1 to 9 and 12 to 14 against the defendants, whether for the purpose of issue no.10, 11, 15 and 16 the dispute would have to be referred to arbitration in view of condition no.18 of the insurance policy, having regard to the judgment of the supreme court in Vulcan Insurance vs.Maharaj Singh, A (1976) 287, vide paragraphs 11 and 12 of the said judgment?

9. After the issues are framed, the parties have laid both oral as well as documentary evidence. In so far as plaintiffs are concerned, plaintiffs have laid the evidence of one Mr.Hari G.Nagpal and has tendered the various documents being Ex.P1 to P86. Similarly the defendants have laid the evidence of one Mr.P.B.Jariwala, Director of M/s.Mehta and Padamsey P.Ltd. and have tendered

the various documents in the form of survey report dt.29.5.75 and the correspondence entered into by the said Surveyor with the plaintiffs herein.

10. The learned counsel for the plaintiffs has submitted that the insurance policy which was obtained by the plaintiffs covered the loss suffered by the plaintiffs due to fire. It is submitted that it is because the said was Fire Insurance Policy. The learned counsel for the plaintiffs has further submitted that the goods which were damaged in fire were in fact the goods covered under insurance policy and were duly hypothecated with the plaintiff no.2. It has been submitted that on a plain reading of the terms and conditions of the insurance policy, there is no doubt that goods which were destroyed in fire were a subject matter of insurance policy and thus, the plaintiffs are entitled to claim for loss suffered by them under the insurance policy. The learned counsel for the plaintiffs has submitted that though originally the claim was made for the purpose of destruction of the cable and electricity installation however, the said claim has been given

up by them and the claim has been restricted only in respect of razor blades and other material which was insured by the plaintiffs under the said insurance policy. It has been submitted that though plaintiff no.2 has taken out policy but plaintiff no.1 has paid for the premium and thus, plaintiff no.1 and 2 both are entitled to maintain the present suit for the recovery of amount in respect of the said policy.

11. The learned counsel for the defendants has on the other hand contended that the suit is not maintainable in view of condition no.19 and 13 of the the terms and conditions of the said policy. On merits, he has submitted that the suit claim cannot be entertained because the plaintiffs have miserably failed to establish that the goods destroyed and damaged in fire were the very same goods which were covered by the Insurance Policy. It has been submitted that what was covered under the Insurance Policy were the goods which were hypothecated and the hypothecated goods were in the form of raw material or material in process or semi finished product but did not include the finished

goods duly processed and thus, the said goods are not covered by the insurance policy. It has been submitted by the learned counsel for the defendants that the plaintiffs are entitled to claim only if they can establish that the finished product of blades were covered by virtue of hypothecation agreement with plaintiff no.2 and therefore the said goods are covered under the policy also. The learned counsel for the defendants has thereafter contended that the plaintiffs has not cooperated with the Surveyor namely, M/s.Mehta and Padamsey and in view of non-cooperation on the part of the plaintiffs, Surveyor could not carry out proper survey as mentioned by him in survey report and thus, the plaintiffs are not entitled to maintain the claim under the insurance policy on the ground of loss suffered by them in fire. It has been submitted by the learned counsel for the defendants that in fact it is on evidence that the plaintiffs have mixed up the goods contrary to the direction and instruction of surveyor making it impossible for him to identify the goods which are covered by the Insurance Policy and the goods which are not covered by the Insurance Policy. It has been thus,

submitted that if the plaintiffs have not been able to establish that the goods destroyed or damaged in fire were insured goods and they form part of hypothecation agreement then only the plaintiffs are entitled to maintain the suit for the recovery of said amount. It has been further submitted by the learned counsel for the defendants that obviously the finished product cannot be part of the hypothecation agreement because the plaintiffs are entitled to sell the said finished product. If it is a part of hypothecated goods with plaintiff no. 2 then plaintiff no.1 cannot sell the said product without the permission of plaintiff no.2 and therefore, also the said finished product could not form a part of hypothecation agreement. The learned counsel for the defendants has thereafter submitted that in any event, the defendants have not been able to establish the quantum of damages due to goods lost or destroyed in fire. It has been submitted that no documents in the form of stock register which would show the stock available with plaintiff no.1 as on the date of fire has been produced. The learned counsel for the defendants has submitted that mere correspondence with Excise

Authorities cannot establish the fact that the goods destroyed were the quantity mentioned in the said correspondence. The learned counsel for the defendants has submitted that the plaintiffs have miserably failed to establish the quantum of loss suffered by him by virtue of destruction of goods in fire and therefore the plaintiffs are not entitled to any claim under the said Insurance Policy. In rejoinder to the aforesaid submission, the learned counsel for the plaintiffs has submitted that infact the defendants have failed to establish the Survey Report because the person who was the author of the survey report has not been examined. The Surveyor who is examined has only deposed on the basis of record and not on his personal knowledge. Thus, no evidence of surveyor which is only based on the record can be accepted.

12. The plaintiffs have submitted that the argument of the learned counsel for the defendants that goods cannot be identified has to be rejected. It has been submitted that even in respect of finished product, the claim is covered because that also forms part of hypothecation agreement and

therefore, consequently forms part of insurance policy and thus they are entitled to recover the same amount.

13. On the basis of aforesaid rival contentions, I am required to determine the issues which are framed and thus, I consider the case case issue by issue as under:

14. In so far as issue no.1 is concerned, there is no dispute that the plaintiff no.1 is a registered firm and thus, I answer the issue no. 1 in affirmative.

15. Issue no.2 and issue no.13 are based on condition no.19 of the policy. The said condition no.19 of the policy reads as under:

> "In no case whatever shall the Company be liable for any loss or damage after the expiration of twelve months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration."

16. Condition no.19 interalia prescribes that

incase of any loss or damage if the claim is not lodged within twelve months from the happening of such loss or damage then in that event the defendant company will not be liable to make any payment. In this behalf the two dates are relevant and important. Firstly, that the fire took place on 24.5.73 and the claim is lodged on 17.7.73 being Ex.P54. By the said letter dt.17.7.73 the claim in the prescribed format in respect of loss took place due to fire has been lodged by the plaintiffs with the defendants that is within the period of one year. In fact the claim is lodged within the period of two months from the happening of fire and therefore in my opinion, condition no.19 is duly complied with and there is no breach thereof. In view thereof, I answer issue nos.2 and 13 in the negative.

17. Issue no.3 pertains to condition no.13. The said condition no.13 also reads as under:

> "If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the Insured or any one acting on his behalf to obtain any benefit under this Policy; or, if the loss

> or damage be occasioned by the wilful act, or with the connivance of the insured; or, if the claim be made and rejected and an action or suit be not commenced within three months after such rejection, (or in case of an arbitration taking place in pursuance of the 18th condition of this Policy) within three months after the arbitrator or arbitrators or umpire shall have made their award, all benefits under this policy shall be forfeited."

18. Under condition no.13 it is provided that from the date of rejection of claim within four months, the plaintiffs should file an action in this court. The claim in the present case is refused on 30.4.76 which is Ex.P26 on record. The suit is filed within 3 months from the refusal of the said claim because the suit is filed in this court in May 1976. Thus, even in respect of condition no.13, the claim having been filed within the time prescribed thereunder, I answer issue no.3 in the negative.

19. Now turning to issue no.4, whichis whether the goods which are destroyed in fire are covered under the insurance policy or not. Issue no.7 is a connected issue because under issue no.7 the plaintiffs are required to prove that the goods which are destroyed in fire were blades in process

and duly hypothecated with plaintiff no.2. Issue no.8 is also a connected issue. These three issues are in respect of nature of goods which are destroyed in fire and whether the said goods were hypothecated with the bank and consequently, covered by the Insurance Policy. Now in so far as the said issues are concerned, the insurance policy which has been produced is at Ex.P1 The said policy describes the goods as under:

> "On stock of raw materials, such as steel strips, tools, spares, die punch and such other materials pertaining to the Insured's trade belonging to them and under hypothecation to the Bank whilst stored and/or lying in the ground floor of the premises of I class construction situate at survey no.14, Hissa No.5, Plot No.9A, Village Mohilla, Sakivihar Road, Sakinaka, Bombay - 72."

20. Thus, the goods which are infact insured by the defendant company are the raw materials, such as steel strips, tools, spares, die punch and other materials which are hypothecated to the bank and stored at the factory premises. Thus, it was necessary for the plaintiffs to establish that in fact the goods which are destroyed in fire were

hypothecated with plaintiff no.2 bank under the hypothecation agreement so as to claim the benefit of the Insurance Policy.

21. It is an admitted position on record that the plaintiffs have failed to produce any hypothecation agreement for the period which is a relevant period i.e. 1971-72 and upto the date of fire i.e. 24.5.73. However, the plaintiffs has produced the xerox copy of an hypothecation agreement which is Ex.P86. The said hypothecation agreement of a movable property is dt.9.4.74. However, the plaintiffs did not produce the agreement of the period 1971, 1972 and 1973 which is the relevant period. The agreement which has been produced dt. 9.4.74 is merely a xerox copy and not the original and no evidence is laid by the plaintiff no.1 to satisfy the court for introducing secondary evidence which is necessary under the provisions of s.63 r/w s.65 of the Evidence Act. Thus, no case is made out to accept the said document in evidence as a secondary evidence.

22. Apart from the aforesaid fact, in my

opinion the hypothecation agreement produced dt. 9.4.74 cannot be relied upon to establish that the goods which are hypothecated and are destroyed by fire on 24.5.73 were identical. Once it is established that the plaintiffs have failed to prove that the goods which were gutted in fire were infact hypothecated with plaintiff no.2 bank then the defendants are not liable to make payment under the said insurance policy because the insurance policy contains a condition that the goods which are hypothecated with plaintiff no.2 bank are the only goods which are covered by the Insurance Policy against the risk of fire. In the present case, the plaintiffs have miserably failed to establish that the goods which were gutted in fire were infact hypothecated with plaintiff no.2 bank.

23. Apart from the aforesaid fat, I am also of the further opinion that xerox copy of hypothecation agreement produced is of a period subsequent to the fire. Thus, even if the said document is considered in evidence still the same is totally irrelevant and does not establish that as of the date of fire which were the goods

hypothecated with the plaintiff no.2. I am not impressed with the argument of the learned counsel for the plaintiffs that goods in earlier hypothecation agreement and a xerox copy produced for subsequent period are identically described because in absence of any evidence on record, I cannot by assumption hold that the goods are identically described. In that view of the matter, I hold that the plaintiffs have failed to establish the goods which are gutted in fire were hypothecated with the plaintiff no.2 bank.

24. Another angle which has been argued by the learned counsel for the defendants is that the goods which are infact hypothecated with the bank are only raw material and or semi processed material and not finished blades. It has been brought on record by virtue of the correspondence with the Excise Authorities that what was gutted in fire was finished blades and not the semi processed material or raw material. The correspondence which has been produced by the parties indicates that the plaintiff no.1 has contended that though the blades were finished blades they were soaked in chemical

and were kept for drying that means that they are the blades in process and semi processed gods and therefore covered by the said Insurance Policy. Though in view of my finding that the plaintiffs have failed to establish that the goods are covered by the hypothecation agreement and consequently, no claim can be entertained for insurance policy. I need not assume this argument at all but then, on consideration of the said argument also I am of the opinion that the plaintiffs have failed to establish that the goods were raw material and/or semi finished products. Immediately, after the fire, the plaintiffs have mixed up the said goods into 10 drums. The said goods were all mixed. The panchnama which has been produced by the plaintiffs and relied upon by them being Ex.P44 and on which there is no dispute indicates that the goods were put in 10 drums and were weighing about 1524.70 kgs. The panchnama also indicates that what was contained in the 10 drums was the finished product of blades of stainless steel in damaged condition. It is also mentioned in the panchnama that these goods had brown spots thereon and the Excise Authorities had declared them as unfit for use.

From the evidence which is produced by the plaintiffs, it is evident that what was destroyed in fire was a finished product namely razor blades of stainless steel which were all mixed up in 10 drums and laying there. It is now well settled that the conditions of the policy has to be strictly construed. The description of the goods mentioned in the policy does not in any way include the goods which are already finished product i.e. blades which are meant for sale. What is covered by the insurance policy is raw material, such as steel strips, tools, spares, die punch and such other materials pertaining to the Insured's trade and belonging to them and hypothecated with the bank. It does not cover at all the items such as finished razor blades and thus in my opinion, it is difficult to accept the contention of the learned counsel for the plaintiffs that even the razor blades are covered by the insurance policy or that merely because the razor blades were put in chemical this should be treated as semi finished or material in process for the purpose of giving the benefit of insurance policy to the plaintiffs herein. Thus, in my opinion, the plaintiffs have

failed to establish the case that the goods which are destroyed in fire were infact covered by the insurance policy and they are entitled to the benefit of insurance policy and the defendants are liable to make payment to the plaintiffs herein.

25. In so far as issue nos.5, 7, 9, 10, 12 and 14 are concerned, there are certain disputes about permitting the surveyor to survey the said goods. In view of answers given to issue nos.4, 7 and 8,I do not find it necessary to go into these issues at all.

26. This takes me to another issues which is issue no.15, the plaintiffs have fairly submitted that the electrical installations in the plaintiff no.1’s factory are not covered by the insurance policy and infact they have given up the said claim. In that view of the matter, my answer to issue no.15 must be in negative.

27. In so far as issue nos.11 and 16 are concerned, the same pertains to quantum of damage caused by the plaintiffs by virtue of destruction

of fire. In my view, having given a finding that the plaintiffs have failed to prove that the said goods damaged in fire not covered by the hypothecation agreement and consequently, they are entitled to the claim under the insurance policy, strictly speaking, it is not necessary to answer the aforesaid issues nos.11 and 16. However, even if I had to answer the said issues I would answer in favour of the defendants and against the plaintiffs.

28. In the present case, the plaintiffs have miserably failed to prove the quantum and value of goods which are destroyed in fire. The primary evidence for proving the quantum and value of goods was to produce the record of the company to show that as on the date of 24.5.73 what were the goods which were in stock available with plaintiff no.1 and which were hypothecated with plaintiff no.2. However, in place of doing so the plaintiffs have merely produced a statement issued by plaintiff no.2 in a letter dt.7.6.73. The said letter has been addressed by the bank and contains the annexures thereby giving the value of goods

hypothecated with the bank. The plaintiffs have also relied upon the correspondence being Ex.P49B being letter dt.27.5.73, a panchnama Ex.P-44 of the Central Excise Authorities and correspondence with the surveyor in which the plaintiffs have put forward certain amount as quantity of the goods. The said correspondence is at Ex.P49 A and Ex.P49B. The plaintiffs have heavily relied upon the panchnama Ex.P44 and a statement at Ex.P45. On the basis of the aforesaid documents, the plaintiffs have contended that there was a loss of goods of more than Rs.350000 and thus, the plaintiffs are entitled to an amount of Rs.350000 covered under the insurance policy.

29. In so far as the aforesaid contention is concerned, I am of the opinion that the claim raised by the plaintiffs cannot be granted at all. Firstly, the plaintiffs have failed to establish the value and quantity of goods on the basis of documents which were available with the plaintiffs such as purchase register, stock register and the goods in process register. The plaintiffs have not laid any evidence that whether they are maintaining

the said record or for any such reason such as fire the said evidence has bene destroyed. Even otherwise, looking into the evidence produced by the plaintiffs, I am of the opinion that the same does not establish either the quantum of goods which are destroyed in fire or the valuation thereof.

30. In my opinion, the correspondence which has been entered into by the plaintiffs with the Surveyor or the letter written by the plaintiff no.2 to the plaintiff no.1 would not be sufficient enough to establish the claim of loss or damages by the plaintiffs in respect of quantum of goods and / or value thereof. The non production of relevant material and/or documents leads me to the conclusion that the plaintiffs have failed to establish the claim in the suit both in respect of description of goods, quantity of goods and value of goods destroyed in fire. I am therefore, of the opinion, that plaintiffs are not entitled to ay relief in the present suit.

31. In so far as issue no.17 is concerned,

neither of the parties have pressed the same and therefore the same is not dealt with. In the circumstances aforestated, I am of the opinion that the plaintiffs have failed to establish their case for recovery of amount from the defendants under the said insurance policy for the goods loss and/or destroyed in fire which took place in the plaintiff no.1's premises on 24.5.73 and consequently, I am of the view that the suit of the plaintiffs must fail and accordingly, the same is dismissed. However, there shall be no order as to costs.